

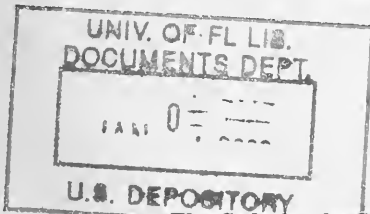
NATIONAL RECOVERY ADMINISTRATION

PROPOSED CODE OF FAIR COMPETITION

FOR THE

SILO MANUFACTURING
INDUSTRY

AS SUBMITTED ON AUGUST 30, 1933



The Code for the Silo Manufacturing Industry in its present form merely reflects the proposal of the above-mentioned industry, and none of the provisions contained therein are to be regarded as having received the approval of the National Recovery Administration as applying to this industry

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933

SUBMITTED BY
NATIONAL SILO MANUFACTURERS ASSOCIATION
(II)

CODE OF ETHICS AND PRACTICES OF THE NATIONAL SILO MANUFACTURERS ASSOCIATION

PREAMBLE

To the end that the Silo industry may do its part in National economic recovery, this Code is set up for the purpose of reemploying labor at fair and adequate wages, reducing and relieving unemployment, reducing labor hours, and improving conditions in order to eliminate uneconomic and unfair competitive practices, destructive to the interests of the public, the employees, and the employers, to the end of rehabilitating the Silo industry and enabling it to do its part toward establishing restoration and maintenance of the highest practical degree of public welfare.

The National Silo Manufacturers Association is the broadened outgrowth necessary under the National Recovery Act of its immediate predecessor, the National Silo Research Council, and others, which have had a continuous existence over the past 21 years as the organized National voice of the Silo trade in this country.

Of such vital import to the economic welfare of the Nation was the conservation of food during the late World War that the Silo industry was exempted by Federal act and license in order to save, handle, store, and preserve our forage food crop harvest. The activities of this consolidated trade association have touched upon all phases of this industry. These activities have included engineering and economic research of great benefit to allied industries at large, and particularly to the consuming public. No initiation fee has been charged, and all Silo manufacturers have at all times been invited to become affiliated with the Trade Association of their industry.

In the form in which it is finally approved by the President of the United States this Code of Fair Competition will become mandatory upon the Silo and/or Silo equipment industry throughout the United States.

Membership.—Membership in the National Silo Manufacturers Association is and shall be open to any person engaged in the Silo and/or Silo equipment industry. Each and every person, member, and/or nonmember of this Association shall be bound by the provisions of this Code and the rules and regulations issued thereunder, and shall be compelled to adhere to such penalties as may be prescribed by this Code or by the law. No inequitable restrictions on admission to members are or may be imposed by this Association.

DEFINITIONS

ARTICLE 1. (1) "Silo Manufacturer" means any person regularly conducting the business of manufacturing, selling, and/or building Silos and/or Silo equipment such as is used primarily for Silos, and for handling the contents for storage therein.

(2) "Silo" means any subterraneous or tower type container of whatsoever construction or materials intended for the purpose of storing and/or handling forage crops, grain, solid fuels, aggregates, bulk materials, etc.

ADMINISTRATION

ART. 2. *Enforcement.*—The administration officer of this Code shall be the Executive Secretary of the National Manufacturers Association. He shall be required to submit and to explain the provisions, purposes, and aims of the Code to all producers of Silos and/or Silo equipment, including members and nonmembers of this Association.

Any producer of Silos and/or Silo equipment injured by the violation of this Code shall file with the Executive Secretary a written complaint setting forth the facts in the matter and requesting such relief as may be just.

The Executive Secretary of the National Silo Manufacturers Association is authorized and directed to enforce vigorously, equitably, and without exception a system of discipline for violators of this Code or any of its rules, regulations, or provisions, as follows:

A fine against violators, in cases where the violation involves a sale of Silos and/or Silo equipment, of an amount not to exceed 50 percent of the established price of the equipment sold.

A fine against violators, where the sale of Silos and/or Silo equipment may not be involved, of an amount not to exceed five hundred dollars (\$500.00).

The Executive Secretary may use his discretion, as circumstances warrant, in substituting an arbitrary fine for the percentage of sale plan.

Violation of any or all rules of the Code may be considered a separate offense for each and every day such rules are violated.

If found necessary to the welfare of the industry or in support of the proper administration of this Code, the Executive Secretary may give full publicity to the facts regarding any violation by any person of any rule or regulation of this Code, and the hearing and determination thereon, without any liability for libel arising therefrom.

Any fines assessed and collected shall be turned into the Association Treasury. Such money shall be available for awarding financial damages to member (or members) injured by violations. Fines collected and not so used shall be applied to the Association's operating budget.

Any member of the National Silo Manufacturers Association or any producer of Silos and/or Silo equipment who is not a member of the Association shall have the right to appeal from the ruling or decision of the Executive Secretary, and such appeal shall be heard by a representative Arbitration Committee of at least three persons, such committee to be appointed by the Executive Committee of the National Silo Manufacturers Association from the organizations of different members of the industry. Under this provision a separate Arbitration Committee shall be named to handle each appeal, and the membership of such committee shall be truly representative for the purpose of insuring the parties a fair hearing,

but shall not include any members of the industry connected with or in any way involved in the dispute in question.

The decision of such Arbitration Committees may be appealed by either party to the Association as a whole, and the decision of the Association shall be final and binding. If such Association decision is not accepted and complied with by the complainant or defendant the case shall be turned over to the Executive Committee of the industry for submission to the Administrator of the National Industrial Recovery Act.

Divisions.—For the purpose of the administration of this Code the Country is divided into four divisions as set forth below:

(a) *Atlantic Division*—including New York, Pennsylvania, Delaware, New Jersey, all of the New England States, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida.

(b) *Central Division*—including Ohio, West Virginia, Michigan, Illinois, Indiana, Kentucky, Tennessee, Alabama, and Mississippi.

(c) *Northwestern Division*—including Wisconsin, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wyoming, Montana, Washington, Oregon, and Idaho.

(d) *Southwestern Division*—including Kansas, Missouri, Oklahoma, Arkansas, Texas, Louisiana, Colorado, New Mexico, California, Nevada, Utah, and Arizona.

The Executive Committee may change or modify the boundary lines between divisions as conditions may demand from time to time.

Participation.—Participation in this Code, and any subsequent revision of or addition to the Code, shall be extended to any person, partnership, or corporation in the Silo and/or Silo equipment industry who accepts his share of the cost and responsibility, as well as the benefit of such participation by becoming a member of the National Silo Manufacturers Association.

No initiation or entrance fee shall be charged for membership in the National Silo Manufacturers Association, but there shall be levied against all members of the Association annual dues in the amount of twenty-five dollars (\$25.00). Additional dues needed to finance the activities of the Association in carrying out and enforcing the Code of the industry shall be levied on an equitable basis against each member in proportion to the volume of its sales of the items covered by this Code.

Statistics and Reports.—The Executive Secretary shall have the power and authority to require from each manufacturer of Silos and/or Silo equipment from time to time such wage and labor reports, information, and records as shall be necessary to the adequate administration and enforcement of the provisions of this Code.

The Executive Secretary shall have the right at all times to examine all records of every producer of Silos and/or Silo equipment, whenever such inspection is necessary for the adequate administration and enforcement of the provisions of this Code. It is definitely agreed that any such information obtained by such inspection shall be of a strictly confidential nature, except insofar as disclosure of the facts so obtained may be necessary to the just administration of this Code.

LABOR

ART. 3. (1) As required by Title I, Section 7 (a) of the National Industrial Recovery Act, it is agreed:

(a) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives, or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(b) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

(c) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

(d) It is clearly understood that nothing in this Code shall impair in any particular, rights of the employee and employer to bargain individually or collectively as may be mutually satisfactory to them.

(e) Nothing in this Code is to impair the rights of employers to freedom in the selection, retention, and advancement of employees, on the basis of merit.

(f) Nothing in this Code is to prevent the selection, retention, and advancement of employees on the basis of their individual merit, as determined by employer, without regard to their affiliation or nonaffiliation with any labor organization.

(g) It is expressly stipulated that neither any provision of this Code nor the fact or manner of its preparation, presentation, adoption, or filing shall be construed as constituting a waiver of any constitutional right which the several members of the National Silo Manufacturers Association or industry might otherwise have and enjoy. Any such provision which may limit or abrogate any constitutional right is inserted under the unavoidable requirements of the National Industrial Recovery Act as the same is understood by said members and not voluntarily nor with their approval as a contractual relinquishment of such right.

(2) No person under 16 years of age shall be employed.

(3) (a) *Maximum Hours of Labor.*—Maximum hours of labor of employees subject to the jurisdiction of this Code, shall be exclusive of executives, administrative, and supervisory staff and assistants, salesmen, field collectors, engineers, and watchmen.

(b) On account of the extreme seasonal character, causing abrupt and violent fluctuations in volume of business from day to day in the Silo and/or Silo equipment industry, during the impracticable condition of the rush season manufacture of Silos for perishable food crops which would cause great and unavoidable hardship unless relief from this unusual and temporary burden is granted, it is proposed that some reasonable latitude may be provided for in maximum hour provisions in this Code. It is, therefore, agreed that the number of hours of work per week for any employee, other than exclusions as herein provided for, may be averaged over two six-month

periods—February to July inclusive, and August to January inclusive, at 40 hours, provided, however, that no employee shall work more than 1,000 hours per six-month's period, or 48 hours per week, or 8 hours per day.

(c) *Field Service*.—Because of the incontrovertible fact that a part of the volume of the Agricultural Silo and/or Silo equipment industry is agricultural service requiring much assembly-construction-erection service at final destination, to save and store perishable food crops, which we will designate here as “Field Service” in conjunction with the owner and/or his Agricultural Labor assisting—this service usually requiring board, bed, and living with the family, offset by working the same hours as such Agricultural Labor—and further, Agricultural Labor being exempt from the labor provisions of the N.R.A.—it will be an impossible barrier severely penalizing Agriculture and this industry unless such Field Service operations be considered entirely separate from and independent of factory, office, and/or plant operations. Without exemption, or classification equal to Agricultural Labor, it will immediately create great and unavoidable hardship, forcing a large portion of this industry out of business. Therefore, it is submitted and proposed that such Field Service labor be exempt and classified the same as Agricultural Labor during and for the period only when such labor is performed other than at the manufacturing plant locations of the industry. The minimum wages, however, for labor involved in such Field Service, regardless of where performed, shall conform to Minimum Wages of this Code less one dollar (\$1.00) per day allowance for board and lodging furnished on such Agricultural Silo and/or Silo equipment jobs.

MINIMUM WAGES

ART. 4.—The minimum wages which shall be paid by persons in this industry subject to the jurisdiction of this Code, shall be not less than 35¢ per hour. It is agreed that this paragraph establishes a guaranteed minimum rate of pay regardless of whether the employee is compensated on the basis of a time rate or on a piecework performance. Piecework rates shall be rated so that an employee can earn not less than the minimum rate per hour provided he works at a reasonably efficient gait as has been customary in the respective establishments of the industry. Any employer in this industry located in a section of the country where a lower minimum wage rate has been prescribed and accepted by the President of the United States in the code of another industry for employees in the same crafts or classifications of labor employed in this industry shall have the right to employ such crafts or classifications of labor at such lower rate.

It is understood that Junior employees, learners, and apprentices shall be excepted from the provisions of this Code for a period of 90 days from date of their employment, and shall be paid not less than 75 percent of the above minimum, and this shall not represent more than 10 percent of the total pay roll.

COST BASIS RELATION AND FAIR SELLING PRACTICE

ART. 5.—It shall be unfair competition for any producer of Silos and/or Silo equipment to sell his product below his own gross cost

plus 5% net profit—or below the average “mode” cost plus 5% net profit.

The cost of goods sold, as mentioned in the preceding paragraph, shall include not only all direct material and normal direct labor costs entering into the article in question, but also a proportionate share of all normal indirect costs of the productive process, including management, maintenance, operating, and other overhead expenses of both factory and shipping departments plus a proportionate share of the normal administrative, advertising, and selling expense of the business.

Uniform Terms of Sale.—All contracts of sale shall be in writing and shall contain a definite statement of specifications, price, quantity, terms of payment, time and place of delivery, and all other items necessary to form a complete understanding. Time purchases shall require a minimum down payment of not less than one third of the F.O.B. factory sales price, on delivery or before the first of November of the current sales year—and shall take an added standard mark-up finance charge of not less than five percent over cash price, with interest at not less than six percent from at least the first day of August—and/or on deliveries after July 1st, from at least the first day of the second month following date of shipment. Definite Standard terms of sale as published shall be adhered to, and the violation of such published terms by a person in this industry is a violation of this Code.

Stabilization.—Reasonable published sales prices shall be F.O.B. factory, with transportation to destination, and any tax and/or surcharge imposed by any present or future law, Federal, State, or any other Government agency added as a separate item to be paid by the purchaser. Freight equalization zones for each division shall be prescribed and strictly adhered to. Truck shipments shall take same equalization rates as railroad freight rates. In each divisional region or zone the Executive Secretary shall formulate plans for the determination of fair and reasonable costs, and all persons selling their products in such region shall adhere to such plans. Any plans agreed upon in such division shall give due consideration to the average cost.

RULES AND REGULATIONS TO PREVENT UNFAIR COMPETITIVE PRACTICES

ART. 6. (1) *Secret Rebates.*—No person in this industry shall make a secret prepayment of transportation charges or permit the payment or allowance of secret rebates, so-called agency allowances to the purchaser, refunds, credits, or unearned discounts, whether in the form of money or otherwise, or the giving of premiums, or extending to certain purchasers or institutions special prices, service, or privilege not extended to all purchasers.

(2) *Interference in Contracts.*—No person in this industry shall willfully interfere by any means or device whatsoever, in any existing contract or order between a seller and a purchaser, or sale of any product handled by the industry, or the performance of any contractual duty or service connected therewith, such interference tending to cause the breach of an existing contract or order and being for the purpose or with the effect of dissipating, destroying,

or appropriating, in whole or in part, the patronage, property, or business of another engaged in this industry.

(3) *Defamation of Competitor*.—No person in this industry shall defame a competitor by words or acts, falsely imputing to him dishonorable conduct, inability to perform contracts or questionable credit standing, or by the false disparagement of the grade or quality of his material.

(4) *Conformity with Specification Requirements*.—No person engaged in this industry shall sell or offer for sale any product of the industry with intent to deceive customers, or prospective customers, as to the quality, quantity, size, grade, or substance of each product.

(5) *Misbranding*.—No person in this industry shall mark or brand products of the industry for the purpose or with the effect of misleading or deceiving purchasers with respect to the quality, identity, quantity, size, grade, or substance of the materials purchased.

(6) *Purchaser Commission Subterfuge*.—No person in this industry shall make or promise to any purchaser or prospective purchaser, or to any officer, employee, agent, or representative of any purchaser or prospective purchaser, any commission, consideration, gratuity, or other payment or remuneration, directly or indirectly, for the purpose of inducing or compensating for a sale.

This provision shall not apply to any Code member selling at standard open dealers discount to qualified dealer-agencies so qualified by having actually sold on bona fide dealer-agency contracts two or more Silos and/or Silo equipment and whose names have been listed as such with the Executive Secretary at least 90 days previous to the date of such sale (waiving the 90-day clause for those registered during the first 30 days only after approval of this Code).

(7) *Commercial Bribery*.—No person in this industry shall offer or give commissions, prizes, premiums, gifts, or excessive entertainment as an act of commercial bribery to any one in connection with the sale, purchase, or use of his products, or as an inducement thereto.

(8) *Enticement of Employees*.—No person in this industry shall unfairly solicit the services of employees, agents, or dealers from a competitor nor interfere with a competitor's business through the enticement of his employees.

(9) *Misrepresentation*.—No person in this industry shall misrepresent the capacity of a Silo, the feeding value of ensilage or forage crops, nor misquote feeding tests made by either stations or users, nor misrepresent a competitor's product.

(10) *Fraud and Misrepresentation*.—No person in this industry shall make, cause, or permit to be made or published, any false, untrue, or deceptive statement by way of photograph, advertisement, or otherwise concerning grade, quality, character, nature, origin, manufacture, or preparation of products of a competitor.

(11) *Patents, Trademarks, and Trade Names*.—No person in this industry shall imitate the trade marks or trade names of a competitor which results in deception to buyers and consumers, which may be an invasion of property rights of such competitor. The circulation of threats of suits for infringement of patent or trade mark among customers of a competitor, nor made in good faith, for the purpose

of harassing and intimidating customers, is an unfair trade practice.

(12) *Guarantee—Misrepresentation.*—No person in this industry shall make any statement, either oral, written, or printed, for the purpose of having the effect of misleading or deceiving purchasers with respect to the quality, grade, longevity, brand, or substance of the goods purchased. Built-in quality is its own best guarantee. Long contingent guarantees not backed by adequate resources are condemned.

(13) *Enforcing Observance by Distributors and Agents.*—No person in this industry shall permit his products to be handled by a middleman or agent standing between producer and consumer who violates any of the provisions under Articles 5 and 6 of this Code of Fair Competition.

(14) *Open Price Lists.*—Every manufacturer or producer of farm Silos shall at all times keep on file with the Executive Secretary copies of all his published price lists. Any producer making changes in his prices or contemplating the issuance of new prices shall, as a matter of information to the industry, give the Executive Secretary notice of such change or changes. Where revisions are upward, the producer making such change shall in no case notify his selling organization or the trade of such change or changes until after he has notified the Executive Secretary. Where the price revisions are downward, notice shall be given the Executive Secretary not less than two weeks before the dates on which the new prices are to become effective. If the Executive Secretary deems it necessary to have additional price lists, the members of this Association agree to furnish same.

(15) *Trade-ins.*—No person in this industry shall accept real property, livestock, or other commodities, either as part or full payment, to induce or cause a Silo and/or Silo equipment sale, except that Silos and/or Silo equipment only may be accepted as part payment on a sale provided that the maximum amount allowed for such trade-in is in no case in excess of 20% of the then current published sale price of the same size and type of Silo and/or Silo equipment, and in no case in excess of \$50.00. It is further provided that each regional division by a majority vote may submit modifications of this schedule which when approved by the Executive Committee shall become operative for that division. Such trade-in allowance must appear in writing on all such contracts of sale.

RESEARCH

ART. 7. (1) In order to increase knowledge of the properties of materials and products of the industry and for the purpose of preventing waste, improving storage, and preserving qualities and broadening the field of endeavor with resulting benefit to the public, this industry may, insofar as practicable, continue to engage in:

(a) Research into the properties of the materials.

(b) Research into methods of production.

(c) Research into methods of use.

(d) Cooperation with Governmental and other agencies in their research work along these lines.

(e) Supervision or assistance in planning for the purpose of promoting stabilization of this industry and avoiding undue economic fluctuations within.

(f) Such other investigations of a helpful nature, together with educational publicity, as may be desirable.

GENERAL

ART. 8. (1) No provision in this Code shall be interpreted or implied in such a manner as to—

- (a) Promote monopolies;
- (b) Permit or encourage unfair competition;
- (c) Eliminate or oppress small enterprises; or
- (d) Discriminate against small enterprises.

(2) This Code or any of its provisions may be canceled or modified by two thirds vote of the members of this Association, and any approved rules issued thereunder shall be in effect to any extent upon due conformity to any action of the President, under 9B of the National Industrial Recovery Act.

(3) Amendments to this Code may be initiated or proposed to the Silo Administrative Officers by any member, and when approved by a two-thirds vote of the members of the Association shall be effective subject to the approval by the President of the United States.

(4) Supplemental Code provisions which may be desirable to meet peculiar conditions arising in any of the several territorial divisions may be filed with the Silo Administrator and, if not inconsistent with the provisions of this Code, may be recommended by it to the Administrator. When approved by the Administrator, such supplements shall have the same source and effect as any other provisions of this Code.

(5) Violations.—Any act that is deemed to be an unfair trade practice shall be considered as a violation of this Code and of the rules and regulations attached hereto and the act under which the Code is authorized. Violation by any person subject to any provisions of this Code, or of any approved Code issued thereunder, or of any agreement entered into by him under this Code, is an unfair method of competition and the offender shall be subject to the penalties imposed by this Code.

PRODUCTION CONTROL

ART. 9. (1) We agree that, because existing productive capacity far exceeds the normal demand, for a period of 12 months from the effective date of this Code, not to increase our productive capacity except insofar as it might be normally increased through the substitution of new and improved equipment for existing equipment or through more efficient methods of manufacture.

(2) *Note.*—In view of the foregoing agreement we specifically ask that the Administrator establish a rule which will make it necessary for any concern desiring to undertake the manufacture of Silos and/or Silo equipment to show a necessity for such increase in productive capacity or that the product he intends to manufacture will



better serve the public interest than such products as are now available.

(3) *Antidumping*.—To prevent dumping from sources outside of the industry as well as within, which has been so prevalent during the past few years, any producer or dealer in the commodities sold primarily by this industry or any person in this industry shall not sell such materials below the "mode" cost established and prevailing in the region, or subdivision thereof, where delivery is made.

ARBITRATION

Any complaint, difference, controversy, or question of fair competition which may arise between a member of this trade and a member of any other industry or trade under or out of this Code or a Code of Fair Competition adopted by such other industry, or any question involving a conflict between provisions of this Code and of any other Code affecting this industry, shall be submitted to arbitration under the rules of the American Arbitration Association.

EFFECTIVE DATE

If any provision of this Code is declared invalid or unenforceable, the remaining provisions shall remain in full force and effect the same as if they had been separately presented for approval by the President.

This Code shall be in effect beginning the second Monday after its approval by the President of the United States and shall remain in effect until December 31, 1934, unless and until modified or revoked, and until the expiration of the National Industrial Recovery Act.